Jail Appeal : D.B.

Cr.A. 868/04

(2)

APPEAL OF PRISONER

CF0000066209

No. 255/04 Name मोधनु

Father's name भागुर कोरवा

Residence मा0-पेण्डारी थाना-राजपुर Age 52 वर्ष

Sentenced सत्र प्र0क्र0-149/96 धारा-302 IPC On 30-09-2004

Under section आजीवन कारावास by मा0-द्वितीय अपर सत्र न्यायाधीश अम्बिकापुर सरगुजा (छ0ग0)

पंजीकृत

अर्थदण्ड एक लाख या पांच वर्ष

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with-in seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practiotioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement 30-09-2004
2. Date of which copy received 1-10-2004
3. Date on which appeal sent 7-10-2004
4. Whether the prisoner wished to be represented or not-Yes/No.

No. 149/96 Name मोधनु मा0-भागुर कोरवा

Continued in केन्द्रीय Jail अम्बिकापुर सरगुजा (छ0ग0)

No. 5436 Dated 08-10-04 199

Forward to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय एडिशनल रजिस्ट्रार (न्यायिक) उच्च न्यायालय बिलासपुर (छ0ग0)

to gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

संलग्न :- निर्णय प्रतिलिपि 12 (बारह) पेज /

Superintendent

8/10/04

Superintendent
Central Jail Ambikapur

Date of receipt in C.J.M's Office

Date of receipt record to accompany

Memo of Appeal of the Appeliate Court

No. Dated 199

Forwarded to the

C.J. Magistrate

Date of receipt in Appeliate Court

High Court
BILASPUR
12 OCT 2004
Reg. No. 1886
High Court Bilaspur

(11)

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE SHRI LC BHADOO &
HON'BLE SHRI VK SHRIVASTAVA,J J.
27.02.2006

Smt Savita Tiwari, counsel for the appellant - Moghnu Korwa in Criminal Appeal No.868/2004.

Shri RK Jain, counsel for the appellant - Madan Korwa in Criminal Appeal No.825/98.

Shri JD Bajpai, Additional Public Prosecutor with Shri Akhil Mishra, Panel lawyer for the State / respondent.

PER L.C. BHADOO, J.

Oral Judgment dictated on *Dais.*

Criminal Appeal No.868/2004 filed by Moghnu Korwa and Criminal Appeal No.825/1998 filed by Madan Korwa are arising out of the same incident and relate to the same incident; therefore, they are being disposed of by this common judgment.

Accused/appellant Madan Korwa has preferred the appeal No.825/98 questioning the legality and correctness of the judgment of conviction and order of sentence dated 31.12.1997 passed by 2nd Additional Sessions Judge in Sessions trial No.149/96 whereby learned Second Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

302 read with Section 34 of the Indian Penal Code, sentenced him to undergo imprisonment for life.

Accused/appellant Moghnu Korwa has preferred the appeal No.868/2004 questioning the legality and correctness of the judgment of conviction and order of sentence dated 30.09.2004 passed by Second Additional Sessions Judge in Sessions trial No.149/96 whereby learned Second Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,00,000/- (Rupees one lakh), in default of payment of fine to further undergo five years RI.

Accused Moghnu Korwa was obsconding. Therefore, proceedings under Section 299 of the Cr.P.C. were initiated in the absence of the accused/appellant. Later on, he was arrested and produced before the Court on 18.11.1999. Thereafter Sessions trial No.149/1996 was again taken-up against Moghnu Korwa and was held as stated above.

Brief facts of the prosecution case are that, Jatribai (PW-1) lodged a report (Ex.P/1) in the Police Station Rajpur on 28.03.94 at about 3.20 am to the effect that she is residing in Pendari and is engaged in agricultural activity. Bulchu Korwa came to her residence at 12 noon and invited for meal and consuming liquor. Therefore, she

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

along with her husband Ronha went to the house of Bulchu and after taking meal and consuming liquor, in the evening they started for their residence. She was ahead of all, thereafter her husband was following her. Jatribai and her husband were being followed by Madan Korwa and Moghnu Korwa. When they reached near Khutapani , they stopped Ronha and accused Madan Korwa forcefully pushed Ronha on the ground; accused Moghnu Korwa jumped and sat on his chest and started assaulting him with hands and fists. Accused Madan Korwa pressed her husband, when she tried to intervene, accused Moghnu Korwa twisted her left hand therefore her hand was broken. Therefore, she remained standing. Moghnu Korwa picked up a stone and assaulted on the face of her husband three times, out of which one stroke hit near the left eye, one above that place and other on the forehead and thereby the face was smashed. After this, Madan Korwa and Moghnu Korwa fled from the scene of occurrence. Thereafter she went to her residence and informed Sohana (PW-2), her son that his father has been murdered by Moghnu and Madan. After that, she informed Budha Yadav and Sunder Patel.

On receiving this report, Station House Officer registered the crime under Section 302 read with Section 34 of the IPC, left for the scene of occurrence, after giving notice to the Panchas,

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prepared Panchnama (Ex.P/3) of the body of Ronha. SHO took into possession blood stained soil, plain soil and white stone, the weapon of offence under Ex.P/4. The cloths of the deceased were taken into possession under Ex.P/7. Body of Ronha was sent for Postmortem examination to the Community Health Centre, Rajpur, where Dr.Pritam Ram (PW-12) conducted the Postmortem andprepared report (Ex.P/12). The stone in question i.e weapon of offence was sent for the doctor's opinion and he gave his opinion under Ex.P/13. He opined that the presence of blood on the stone confirms that it was possible to cause injuries, which was found on the head of Ronha. The site plan (Ex.P/15) was prepared by the Patwari. The merg intimation (Ex.P/16) was given by SHO Rajpur and site plan Ex.P/17 was prepared by him. Jatribai was sent for the medical examination of her injuries under Ex.P/19 and Dr.Pritam Ram examined her and prepared injury Report Ex.P/14. The articles found at the scene of occurrence were sent for serologist's examination from where report was received under Ex.P/25. He opined that the stone in question was stained with human blood.

After completion of the investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, First Class Ambikapur who in turn committed the case to the Sessions Judge

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

from where learned Second Additional Sessions Judge Ambikapur received the case on transfer for trial.

The prosecution in order to establish the charge against the accused persons examined 18 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution evidence appearing against them and stated that they are innocent and have been falsely implicated in the crime.

We have heard learned counsel for the parties.

The homicidal death of the deceased is not in dispute.

As far as the involvement of the accused persons in crime in question is concerned, there is only one eyewitness to the incident, i.e.PW-1 Jatribai, wife of the deceased. As far as the accused Madan Korwa is concerned, in examination in chief, she has stated that he also assaulted her husband. The accused person assaulted with stone on the head as a result of which he died. When she tried to intervene, she was also assaulted and her left hand was broken. Accused Moghnu Korwa attacked her husband with a stone, whereas accused Madan Korwa restrained him from proceeding further and accused persons ran away towards the forest. In the cross examination, she has stated that her husband was attacked with a stone by Moghnu, as a result of which he died on the spot. Moghnu

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

also twisted her hand therefore, it was broken. The accused Madan Korwa has not assaulted her husband, he only restrained Ronha from proceeding further. The accused Moghnu assaulted her husband. Therefore, from the above evidence, it is evident that there is no evidence against Madan Korwa regarding assaulting Ronha. As such, the conviction of Madan Korwa under Section 302 read with Section 34 of the IPC is not based on any legal evidence, convicting him in crime in question. Therefore, the conviction and sentence awarded against Madan under Section 302/34 of the IPC cannot be sustained. In the circumstances, we are of the considered view that the appeal filed by accused Madan Korwa deserves to be allowed.

As far as accused Moghnu is concerned, PW-1 Jatribai has categorically stated that he attacked her husband with the stone. In the cross-examination of this witness, the defence counsel has not been able to elicit any circumstance which makes evidence of this witness un-reliable and untrustworthy. PW-2 Sohana, son of the deceased has stated that he was informed by his mother that accused persons namely, Moghnu Korwa and Madan Korwa have attacked his father with stone. The stone in question was taken into possession under Ex.P/3 and same has been proved by PW-3 Sohan. PW-6 Sahabir has also stated that on the fateful night at about 9-10 pm Jatribai came to his house and informed that Moghnu has

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murdered her husband Ronha, by attacking with a stone and he is lying dead on the spot. The evidence of PW-1 Jatribai further stands corroborated by PW-9 Bulchu who has stated that his maternal uncle Ronha,his wife, and two children of Ronha and Moghnu came to the residence on the occasion of Holi Festival and after taking meal and after consuming liquor, left the house in the evening and thereafter Madan came to his house and informed him that Moghnu is attacking Ronha on which he, along with Sohan went to the place of occurrence and they saw that Ronha was already dead. Moghnu was not present there. The above evidence is corroborated by the medical evidence of PW-12 Dr Pritam Ram who has stated that on 29.03.94 at about 9.30 am he conducted the postmortem on the body of Ronha and there was a lacerated wound on the frontal region on the head in the size of 4 X 2 cm deep up to the brain. There was a lacerated wound in the size of 3 X 2 cm deep up to the bone. The mandible bone was fractured and two teeth were also broken. On face and skull clotted blood was present. The face was dis-figured, the skull and the mandible bone were fractured. The nose was pressed and flattened. On dissection of the chest, he found that rib Nos.5-9 were broken. The frontal bone was broken. The membrane and the brain were lacerated. In his opinion, cause of death was, coma due to brain injury and the same was homicidal in

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nature. As per the Serologist report, the stone which was taken into possession from the place of occurrence was stained with human blood. Therefore, the complicity of the accused in crime in question stands proved based on the eyewitness evidence PW-1 corroborated by the medical evidence and also the circumstantial evidence that the stone in question by which the accused assaulted on the head was found stained with human blood.

Learned counsel for the accused/appellant placing reliance in the matter of **RAM PRABHU AND THREE OTHERS VS STATE OF MP** reported in **2000 (1) C.Cr.J.252 (MP)** argued that the accused attacked the deceased in the spur of moment. There is nothing on record to show that the accused assaulted the deceased with an intention to cause his death. Therefore, offence against the accused does not travel beyond Section 304 part II of the IPC.

On the other hand, learned Additional Public Prosecutor supported the judgment of the trial Court. While placing reliance in the matter of **STATE OF RAJASTHAN VS DHOOL SINGH** reported in **2004 AIR SCW 24** argued that looking to the number of injuries on the vital organs of the deceasd, the intention of the accused was evident to cause his death.

In order to appreciate the argument advanced by the respective counsel, we have perused the record. From the medical

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evidence, it is evident that skull bone i.e.frontal region bone was found fractured. The right side ribs from 5-9 were also found fractured and as a result of blow of the stone, the brain and membrane were found lacerated. Even the nose was pressed and became flattened. The face became dis-figured. The bones of skull and mandible were found fractured.

In view of the above facts, the judgment of MP High Court is distinguishable on facts. In that case, the accused persons threw the stones, whereas in the present case the accused attacked with the stone on the skull and chest, as a result of which frontal and mandible bones were fractured. Even two teeth were broken. Ribs were broken. It is true that there is no direct evidence regarding intention of the accused. As per the judgment of Hon'ble Apex Court in the case of Dhool Singh (supra), the intention can be gathered from nature of injury, the part of body where it is caused, the weapon used in causing such injury which are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not. If we look into the facts, almost all the bones of the head and mandible bone were fractured. Ribs were fractured and the accused attacked with the stone repeatedly on the head which resulted in death of the deceased.

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Therefore, the intention of the accused/appellant appears to be writ large to cause death of the deceased.

In the result,

1. Criminal Appeal No.825/1998 filed by accused/appellant Madan Korwa succeeds and the same is allowed. Conviction and sentence imposed on him under Section 302 read with Section 34 of the IPC are set aside. He is acquitted of the charge under Section 302 read with Section 34 of the IPC. He be set at liberty forthwith unless required to be detained in any other case.

2. As far as Criminal Appeal No.868/2004 filed by accused/appellant Moghnu Korwa is concerned, we do not find any illegality or infirmity in the judgment of the trial Court convicting and sentencing the accused under Section 302 of the IPC, except the fine amount of Rs.1,00,000/- imposed on the accused by the trial Court which is too excessive, therefore, we set aside that part only, instead thereof, we impose a fine of Rs,100/-. If the fine is not paid, then he is directed to further undergo one month RI. The appeal is dismissed accordingly, with this modification.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K. Shrivatava
Judge

padma

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